

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MAGNACROSS, LLC,)
)
 Plaintiff,)
)
 VS.) No. 3:20-CV-1959-M
)
 OKI DATA AMERICAS, INC.,)
)
 Defendant.)
 _____)

MOTION TO DISMISS -- VIA VIDEOCONFERENCING
BEFORE THE HONORABLE BARBARA M.G. LYNN
UNITED STATES DISTRICT COURT JUDGE
JULY 14, 2021
DALLAS, TEXAS

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1 (PROCEEDINGS BEGAN AT 2:00 PM.)

2 THE COURT: This is Judge Lynn. I don't know if
3 everybody is on the line yet.

4 MR. LABGOLD: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 All right. I have Mr. Rabicoff and Mr. Chaudhari for
7 the Plaintiff; Mr. Labgold and Ms. Labgold for the Defendants.

8 Any others that I don't see, make your appearances,
9 please.

10 MR. TAYLOR: William Taylor, local counsel for OKI
11 Data.

12 THE COURT: Okay. Thank you.

13 MR. HOEFFNER: Patrick Hoeffner for OKI Data.

14 THE COURT: Okay. I think everybody else on the line
15 is with my office.

16 All right. I want to begin by talking with
17 Mr. Chaudhari and Mr. Rabicoff.

18 So not that I ever would have had somebody accuse me of
19 a cut-and-paste job on a brief, but if I had done that and I got
20 called out for it, I sure would not leave my brief there for two
21 months unamended.

22 Mr. Chaudhari, would you like to speak to that?

23 MR. CHAUDHARI: I'm -- I'm only local counsel on this
24 matter. I defer to Mr. Rabicoff.

25 THE COURT: Well, you signed it. You signed the

1 papers, --

2 MR. CHAUDHARI: That's correct.

3 THE COURT: -- did you not?

4 MR. CHAUDHARI: I did, Your Honor.

5 THE COURT: The response?

6 MR. CHAUDHARI: Yes, Your Honor.

7 THE COURT: Okay. Well, you're responsible for its
8 content, Mr. Chaudhari. Okay?

9 Well, if you read your own asserting positions on Claim
10 12, that wasn't even asserted by you as the Plaintiff.

11 Are you admitted in our court, Mr. Chaudhari?

12 MR. CHAUDHARI: I am, Your Honor.

13 THE COURT: Okay. That's not sufficient under *Dondi*.
14 Mr. Rabicoff?

15 MR. RABICOFF: Yes, Your Honor.

16 THE COURT: Okay. Speak to the question. In May
17 counsel filed a Reply Brief on the Motion to Dismiss that pointed
18 out that your brief is a cut-and-paste job that has little to do
19 with the issues teed up in this case. And if you went back and
20 looked at your brief in response, you would see that that is,
21 indeed, true because, among other things, your brief includes
22 Claim 12 that you did not assert against the Defendant.

23 So why did you leave that -- First of all, my first
24 question would be: Why did you file a brief like that? My
25 second question is: Once it was pointed out to you in May that

1 your cut-and-paste job was not either responsive to the basis for
2 the 101 motion or appropriate, given that it was taking positions
3 with respect to issues that you yourself, on behalf of the
4 Plaintiff, had not claimed, why did you not seek to at least
5 amend your inappropriate response?

6 MR. RABICOFF: Your Honor, respectfully, I think we
7 would say that this, first of all, was not a cut-and-paste job
8 but, in fact, we directly addressed the substance of the opening
9 brief. For example, it's true that we -- we illustrated -- we
10 discussed both Claims 1 and 12, but that was simply for the
11 purpose of just explaining certain facets of the claim that had
12 been mentioned in general. So for example, there was a
13 discussion of Claim 12 in the background, right, giving the
14 background of the patent. However, there wasn't any mention of,
15 you know, Claim 12 specifically being asserted. In fact, it
16 was -- we really only spoke to the invented limitations of Claim
17 1. I mean to be honest, we're talking about relatively close
18 claims, one being a method and the other an apparatus.

19 So our view is, you know, we directly, you know, first
20 of all, made a positive case for patent eligibility, but then,
21 second of all, most importantly, we did very clearly cover the --
22 how there's a concrete assignment of functions to each of the --
23 the claimed pieces of structure. So the control means, for
24 example, and the transmitter and the multiplexer, and all of that
25 is completely appropriate to Claim 1.

1 So our view is that, in fact, we directly ---

2 THE COURT: Is the multiplexer in Claim 1,
3 Mr. Rabicoff?

4 MR. RABICOFF: I'm sorry. The control means and the
5 transmitter ---

6 THE COURT: Is the multiplexer in Claim 1,
7 Mr. Rabicoff? Is it?

8 MR. RABICOFF: Let me just make sure we -- we have the
9 Claim 1 in front of us.

10 THE COURT: Well, that would be a good idea,
11 Mr. Rabicoff, since that's the only claim on which you have sued
12 the Defendants is Claim 1.

13 And while I've got the floor, you also made an issue
14 about what the Defendants were allegedly saying about
15 infringement when their brief is not directed to issues related
16 to infringement. It's directed only to Claim 1.

17 Now you're an officer of the Court. Are you
18 representing to me, as you sit there today, Mr. Rabicoff, that
19 this was an originally written brief, written for this case, and
20 not pirated from some other case? And I am holding you to it.
21 So answer the question.

22 MR. RABICOFF: Yes. Your Honor, just to be clear, I
23 mean that was, of course, a mistake on our part. We did -- did
24 consult, as appropriate, right, with former -- with associates of
25 former counsel to shed light because, of course, this other case,

1 the A.B.P. case was directly relevant; right? So, of course,
2 we're not going to deny that we -- we consulted with former
3 counsel, but we used aspects of that briefing. And I will
4 completely acknowledge that, you know, that was -- that was a
5 typographical error. But, most importantly, I mean there were
6 numerous citations to the opening brief; right? And all of those
7 were -- those citations were perfectly mapped; right? They
8 specifically addressed arguments made in opening brief,
9 characterizations of claim language, all of that. And, of
10 course, that was all with respect to Claim -- the asserted Claim
11 1. So that was all completely on par.

12 It looks like there was some error. I believe it was
13 in the drafting; that that other section did enter into it. So I
14 apologize for that oversight, Your Honor.

15 THE COURT: Okay. We are so far beyond an apology. I
16 don't have words to express it, Mr. Rabicoff. I wasn't born
17 yesterday. You don't even address the key cases that are the
18 subject of the 101 motion in your papers.

19 And, Mr. Chaudhari, you better not think that it is
20 acceptable in my court or in the Northern District of Texas to
21 put your name on a brief that you're not going to take
22 responsibility for, particularly when you signed it. So if you
23 think admission to our court carries so little weight, I am here
24 to convince you otherwise.

25 If -- If I am not conveying sufficiently to you,

1 Mr. Rabicoff, and to you, Mr. Chaudhari, how very unhappy I am
2 about what you filed in this case because, to me, it is
3 absolutely a cut-and-paste job, and I think it is apparent. And
4 that you let that sit there without making corrections -- It's
5 not a typographical error, Mr. Rabicoff. You included an entire
6 section of a brief that has nothing whatever to do with the
7 motion in this case. That's not a typographical error. That is
8 far beyond a typographical error and completely inconsistent with
9 your obligations as counsel to take appropriate professional
10 actions in this case on behalf of your client. So I'm going to
11 begin there.

12 Before we get to the 101, I want to discuss the issues,
13 even though I haven't set it for hearing, that are raised in the
14 Amended Complaint that was filed yesterday.

15 Mr. Labgold, Mr. Rabicoff is representing that you have
16 a settlement agreement between you and the Plaintiff. Would you
17 like to be heard on that?

18 MR. LABGOLD: Thank you, Your Honor. For the record,
19 this is Marc Labgold.

20 We do not have a settlement agreement. As the
21 pleadings make clear, we went through a series of discussions
22 prior to that point at which point we had reached an agreement in
23 principle. The only term that was agreed to was the amount,
24 which for purposes here I will not disclose, but the amount was
25 the only issue.

1 After that, we went into a series of -- what was
2 supposed to be a series of discussions to reach -- actually come
3 to terms for a settlement agreement, and that has not occurred.

4 THE COURT: Well, what he's representing in his papers
5 is that your modifications changed the amount. Is that true?

6 MR. LABGOLD: Ultimately, yes.

7 THE COURT: Okay. Well, what right would you have to
8 change the amount if you all agreed on an amount subject to
9 satisfactory resolution on the terms?

10 MR. LABGOLD: Well, we didn't actually reach -- We had
11 on the one term. We had reached a conceptual agreement in
12 principle on the one term with regard to the amount.

13 As we got into the discussion -- And I just want to be
14 careful here as to what I should be revealing or not from a
15 settlement discussion, but as we got into other material terms,
16 there was disagreement. There were statements that were on one
17 side. Our party needed certain things. There were statements on
18 the other side that that was not possible. There were
19 misrepresentations made. And at that point in time we undertook
20 to answer or, rather, filed the Motion to Dismiss in lieu.

21 And so subsequent to that time, because my client had
22 engaged in additional activity and incurred additional expense,
23 when it was brought back up that they could come in conceptual
24 agreement back to the one issue, we said that if it was, it would
25 be for the lowered amount, and that's how that occurred.

1 THE COURT: Okay. Well, that issue, do you agree that
2 issue cannot be conceivably resolved today? All I have is an
3 Amended Complaint. So no matter what I do on the 101 issue, the
4 alleged settlement agreement remains.

5 MR. LABGOLD: Well, conceptually, yes. I just put this
6 out there that since it is supplemental jurisdiction on a --
7 technically, I believe. We respectfully submit that if the
8 patent was found to be invalid, there would be no basis for that
9 claim being before this Court.

10 THE COURT: Well, you're not suggesting I can't keep
11 it. You're suggesting I shouldn't keep it, because I would have
12 had jurisdiction because it's related to the federal question.

13 MR. LABGOLD: Absolutely. Absolutely. And if the
14 Court should decide, we would not oppose you actually keeping
15 that claim.

16 THE COURT: All right. Just a moment before we
17 proceed. I want to check something in the briefing.

18 (Pause)

19 THE COURT: Mr. Rabicoff, to finish the point I was
20 asking you about, I'm going to quote from your brief at the
21 bottom of 13. It says, "The claims are directed -- are,
22 therefore, patent eligible under Section 101. Arabic 1. Claims
23 1 and 12 Are Directed to Patent-Eligible Subject Matter."

24 Then there is Page 14 that has one line on it because
25 the cut-and-paste job was not reviewed.

1 Page 15, it says, "Claims 1 and 12 do not recite an
2 abstract idea."

3 Throughout the brief, it is referring to the "claims"
4 when there's only one claim that is asserted.

5 At the bottom of Page 18, it says, "Claims 1 and 12
6 require a particular concrete and tangible form that is
7 unconventional."

8 So the Court does not believe it is a fair
9 characterization of your brief to say that Claim 12 was, quote,
10 "in the background." Claim 12 is in the foreground, even though
11 it was not asserted.

12 Mr. Chaudhari, did you read the reply brief?

13 MR. CHAUDHARI: I did not, Your Honor.

14 THE COURT: Is it -- Am I correct, because I have just
15 an "S/signature," did you sign the original of the response,
16 Mr. Chaudhari?

17 MR. CHAUDHARI: I did, Your Honor.

18 THE COURT: Where did you get the information in the
19 brief?

20 MR. CHAUDHARI: It was drafted by Mr. Rabicoff,
21 Your Honor.

22 THE COURT: Okay. Did you learn somewhere that that's
23 acceptable for you to sign a brief and not verify that the
24 contents of it are accurate? That you're just a mail drop?

25 MR. CHAUDHARI: No, Your Honor.

1 THE COURT: Okay. Well, if you did pick that up
2 somewhere, I'm here to disabuse you of that conclusion.

3 All right. Mr. Rabicoff, this is not the first time
4 that you and I have had a conversation of this type. You have
5 appeared before me before. And if you think this is the way I
6 expect lawyers to practice in my court, you are sadly mistaken.

7 Mr. Labgold, I'll hear you on the 101 directed to Claim
8 1. I'm not interested in hearing anything about claims that have
9 not been asserted or positions that you haven't taken.

10 MR. LABGOLD: Okay. Thank you, Your Honor.

11 If I could just clarify on one point. The -- There
12 are -- As part of the amendment that was filed yesterday, they
13 have changed the claims apparently that they're asserting. It's
14 not in the redline, but we went through carefully line by line,
15 and there are other changes. So I just ---

16 THE COURT: Okay. Who -- Who did the redlining?

17 MR. CHAUDHARI: I did, Your Honor.

18 THE COURT: Did you just redline what you felt like
19 redlining and not the stuff you didn't feel like redlining?

20 MR. CHAUDHARI: No, Your Honor. I redlined it against
21 the Word version that I had in our system.

22 THE COURT: Okay. What claims are being asserted now,
23 Mr. Labgold? Because I relied on the redlining.

24 MR. LABGOLD: The language that's now being used is "at
25 least one claim." And every reference to claim numbers has been

1 removed with the exception of the Exhibit 2 which remains the
2 claim chart which contains what they now would consider to be
3 "exemplary Claim 1."

4 THE COURT: Do you think I'm entitled to rely on a
5 redline that was submitted to me as being indicative of all the
6 changes that have been made in the prior Complaint,
7 Mr. Chaudhari?

8 MR. CHAUDHARI: Yes, normally.

9 THE COURT: What do you mean "normally"? Under what
10 circumstances would I not be entitled to rely on it?

11 MR. CHAUDHARI: Nothing, Your Honor.

12 THE COURT: Mr. Rabicoff, what about you?

13 MR. RABICOFF: That's correct, Your Honor. You should
14 be able to rely on it.

15 THE COURT: So somebody give me an explanation for ---

16 (NOTE: Videoconferencing capabilities froze up.)

17 THE COURT: Okay. Preston call IT and tell them to
18 come up here. This is the second time I've had poor Internet
19 connection in my office.

20 LAW CLERK PRESTON: Okay.

21 THE COURT: And, Preston -- Yes, go ahead.

22 LAW CLERK PRESTON: Okay.

23 THE COURT: Preston, bring me the Amended Complaint,
24 please. I don't have it in front of me.

25 Mr. Chaudhari, can you hear me?

1 MR. CHAUDHARI: I can, Your Honor.

2 THE COURT: Mr. Rabicoff, can you hear me?

3 MR. RABICOFF: Yes, Your Honor.

4 THE COURT: Someone give me an explanation as to why I
5 have a redline that doesn't reflect all the changes.

6 MR. CHAUDHARI: Your Honor, I apologize. I redlined it
7 against the Word version I had in my system.

8 THE COURT: Okay. You'll all hold on a minute. I have
9 IT here and I'm trying to figure out -- Okay. Hold on a minute.

10 (Pause)

11 THE COURT: I'll go off the screen for just a moment.

12 (Pause)

13 THE COURT: All right. Can you hear me now?

14 Okay. Can you hear me, Mr. Chaudhari?

15 MR. CHAUDHARI: Yes, I can, Your Honor. Thank you.

16 THE COURT: Mr. Rabicoff, can you hear me?

17 MR. RABICOFF: Yes, Your Honor.

18 THE COURT: All right. I'm on a different device in my
19 Law Clerk's office.

20 So when we were cut off, Mr. Chaudhari, you were
21 explaining to me the redline.

22 MR. CHAUDHARI: Yes, Your Honor. I ran a redline
23 against the Word version of the Complaint that we had in our
24 system, and I failed to check whether that Word version was the
25 exact same as the file-stamped original Complaint which I

1 believed it was but now I'm being told that it's not.

2 THE COURT: Okay. Well, we'll just add that to the
3 list of sources of my extreme unhappiness with the lack of
4 professionalism that is characterized by the handling of this
5 matter by Plaintiff's counsel.

6 I'm going to proceed, Mr. Labgold, with the assumption
7 that what we are talking about here is Claim 1 and only Claim 1.

8 MR. LABGOLD: Okay. Thank you, Your Honor.

9 The -- I'd like to start with kind of an unusual
10 situation because we now have the -- I don't have to address the
11 point that it's only Claim 1 since you've already done that.

12 So if we -- we take a look at the claim that we have
13 here, it's -- it's our position that the claim is drawn to an
14 abstract idea. When we -- I think it's worthwhile just -- I
15 don't know. Can we share screens so I can actually pull up a
16 document to show you?

17 THE COURT: Are you asking me that question?

18 MR. LABGOLD: Yes.

19 THE COURT: I have no idea, Mr. Labgold. That's above
20 my pay grade.

21 MR. LABGOLD: With leave, I'd ask the Court for leave.
22 May I have my associate, Ms. Labgold, pull up the claim just so
23 we can see that we're all looking at the same thing?

24 THE COURT: Sure. Any relation, Mr. Labgold?

25 MR. LABGOLD: Yes. She's the younger and smarter

1 member of the family, my daughter.

2 THE COURT: I thought it's just a coincidence.

3 MR. LABGOLD: Yeah, it's a very common name in these
4 parts, but it's just ---

5 THE COURT: Okay. I've got it. I have the patent. So
6 if you're just trying to show me the patent, you don't need to
7 pull it up there, but if you're referring to something in
8 particular, that's helpful. I've got it, but go ahead.

9 MR. LABGOLD: Okay. So looking at Claim 1, we see that
10 it's a method of wireless transmission of data, and the data can
11 be in analogue or digital format, so it's not specific. And then
12 it transmits that data to a communication channel from at least
13 two data sensors to a data processing means. And the method
14 comprises the step of division of said channel into subchannels
15 and transmitting the data from the sensors respectively through
16 the subchannels.

17 It's our position that this claim here on its face
18 recites two steps: The step of division of the channel into
19 subchannels and the transmitting of data through the data sensors
20 through the subchannels.

21 Now the claim does go on, obviously, in that it says
22 "characterized." So this is an uncommon way of defining it in
23 this term but sometimes we'll see like a "wherein" clause, and
24 this is kind of in that respect. And it goes through these --
25 these three details which we can come back to later, but the

1 point being is that what we're dealing with here, we submit, is
2 when you strip Claim 1 of its excess verbiage, it's drawn to
3 nothing more than dividing a data channel into subchannels and
4 transmitting data from data sensors through the subchannels.

5 Now in their paper, one of the false assertions that
6 comes up from the cutting and pasting is that they state, for
7 example on Page 5, that "OKI argues that the claims are directed
8 to the abstract idea of transmitting information from multiple
9 sensors." There is no such assertion. Our position is that we
10 have dividing of a data channel and transmitting data from data
11 sensors through those channels.

12 Now they make an assertion at Page 5 again that the
13 claims, in this case Claim 1, "are patentably eligible because
14 they are directed to a specific way to solve a problem in
15 computer technology that improves computer functionality." It's
16 our position that Claim 1 neither solves a problem in computer
17 technology, nor does it improve any computer functionality. It
18 simply implements a known process, an admittedly known process
19 using the computer.

20 Now when we look at the Specification, and we're going
21 to look at Column 1, and I'll allow everyone to get to Column 1.

22 THE COURT: Before we get there, Mr. Labgold, --

23 MR. LABGOLD: Yes.

24 THE COURT: -- since you directed me to Page 5 --

25 MR. LABGOLD: Yes.

1 THE COURT: -- of the Response, it says, "Claim 1" --
2 I'm quoting at the bottom of the page, the sentence beginning at
3 the next to the last line on Page 5, Claim 1, quote, "requires a
4 multiplexer that asymmetrically divides a communication channel
5 into subchannels such that the carrying capacities of the
6 subchannels are unequal," and then I'll omit the balance after
7 the semicolon. Is that true?

8 MR. LABGOLD: That is not true. The Claim 1 does not
9 have any multiplexer. And what is a curious point about this
10 patent, as it would relate to other claims which are not at issue
11 at the moment, but there is no multiplexer actually disclosed in
12 the Specification. Rather, once this ---

13 THE COURT: Okay. Just a moment.

14 Mr. Rabicoff, is that statement that I just read into
15 the record from your brief true?

16 MR. RABICOFF: Your Honor, we -- we disagree with this
17 point; right? We use the term "multiplexer," but multiplexer,
18 right, should be underpinned with respect to Claim 1; right?
19 We're talking about a type of method of wireless transmission;
20 right?

21 THE COURT: Okay. Mr. Rabicoff, I'm asking you a very
22 simple question. Does Claim 1 require a multiplexer?

23 MR. RABICOFF: It requires that functionality. It does
24 not have the word "multiplexer," but it's very important to note,
25 looking at the Specification, is the idea of the multiplexer is

1 the idea of dividing this wireless transmission into multiple
2 subchannels to allow -- to allow sensory input where there might
3 be different -- different levels of bandwidth requirements;
4 right? So that's why it's very important that that term
5 "multiplexer" does, in fact, describe the function; right? So
6 it's true that word is not -- And this underlines the need for
7 claim construction, but it's very important to note that that
8 functionality is precisely what a multiplexer is.

9 THE COURT: Okay. Did you ever say anywhere in your
10 brief that I should not rule on this now because I need to have a
11 claim construction? And if so, where did you say that?

12 MR. RABICOFF: Your Honor, that -- that continues to be
13 our position. In fact, what our point was, that when we brought
14 up the *A.B.P.* case, the earlier ruling, we pointed out that --
15 that we're suggesting that the Court should reach that same
16 conclusion and analysis which was that claim construction is, in
17 fact, required. If we actually look back at the briefing in
18 *A.B.P.*, ---

19 THE COURT: Okay. I'm not -- I'm not -- I didn't --
20 Here's a shocker for you: I didn't go back and look at the
21 briefing --

22 MR. RABICOFF: Sure.

23 THE COURT: -- in another case where Mr. Labgold's
24 client was not a party. I didn't and I won't.

25 So you tell me where in your brief you asked me to

1 defer my ruling on 101 to enter into a claim construction. Where
2 did you do that?

3 MR. RABICOFF: Your Honor, there wasn't a specific
4 request for claim construction, but it was requested that this
5 same outcome be reached as in the *A.B.P.* matter. And admittedly,
6 there's -- We're not suggesting there's a *res judicata* issue,
7 none of those things, but that was -- that was the sort of
8 vehicle that we used to make that type of request.

9 THE COURT: Okay. Well, on Page 5 of your brief in the
10 Introduction, you said, "This Court has already denied a Rule 12
11 *Alice* motion against the same claims of the same patent." It's
12 not true that this case asserts the same claims, although Claim 1
13 is overlapping in both. Is that correct? In other words, --

14 MR. RABICOFF: It's true that that one wasn't ---

15 THE COURT: -- there's claims asserted.

16 All right. Go ahead, Mr. Labgold.

17 MR. LABGOLD: One would think after all this time, we
18 would remember to unmute without everybody else reminding me.

19 THE COURT: It's impossible to get through a hearing
20 without at least one, "You need to unmute yourself." Okay.

21 MR. LABGOLD: Your Honor, if you could, please, refer
22 to Column 1, and I was talking about the conventional systems.

23 And in Column 1, Lines 37 to 40, we have the
24 discussion, "Conventionally, the data is transmitted from the
25 data sensors to the data processing function via conventional

1 conductors or cables which impose obvious inconveniences and
2 limitations on the convenient operation of the equipment." So,
3 therefore, the Spec. admits that there were conventional systems,
4 as it was described, that these were actually done with the
5 wires. And the only problem with that was it was apparently
6 inconvenient.

7 Now if you continue on, on Column 1, starting on Line
8 41, there's going to be a discussion of people trying to do this
9 in the prior art with a wireless system. So the use of a
10 wireless system cannot be something that's going to be new but,
11 instead, that's been done conventionally as well.

12 So first, we have the conventional system of just
13 wires. And in the wireless function, we can think of that as
14 applying the conventional system to the use of a computer to make
15 it more efficient.

16 Now through Column 1 up to the top of Column 2, it's
17 going to be discussed that there was still some shortcomings.
18 And with regard -- Column 1, at about Line 54, "The main
19 shortcoming of such prior proposals," and that's with regard to
20 wireless, "has been the sheer volume of data and the composite
21 nature of the data, such as the data -- mixture of data types;
22 example: Digital and analog. A further factor among the
23 shortcomings of these prior proposals is also the composite
24 nature of the data bandwidths to be transmitted."

25 And then it again says previously this had to be done

1 with 12 cables.

2 Now it goes on a little bit further to Page -- or
3 Line -- about Line 65, 66, and it says at Least for the data
4 sensors in the application that they're working on, an automotive
5 application, they produce high data rates necessitating
6 corresponding bandwidths to accommodate them.

7 Now I note here that it's important that they say,
8 "This doesn't apply to all sensors." So this is apparently a
9 problem that exists with some sensors but not all.

10 There's going to be a further clarification of what
11 apparently is supposed to be the improvement in this patent at
12 Column 3, and that's going to start on Line 19. And I read,
13 "Whereas prior proposals in relation to data transmission for
14 automotive and related systems (in which data sensors produce
15 substantially differing data rates) have ignored or overlooked
16 these differing data rate requirements, with the result that the
17 use of equal bandwidth subchannels has led to a non-utilization
18 of subchannel bandwidths for significant numbers of sensors
19 whereby the overall utilization of data transmission, capacity
20 allocated to the communications system has been very far from
21 perfect."

22 Now if we continue just briefly down a little bit
23 lower, it talks about how, by multiplexing, and picking up at
24 Line 33, "allows to be close -- far more closely matched to the
25 available capacity of its subchannel, and the twin evils of

1 subchannel underutilization and undercapacity for a given data
2 flow are thereby avoided."

3 So apparently, what we're supposed to take away from
4 this is that you could do it conventionally. When people try to
5 do it wirelessly, these two evils came up, these twin evils, and
6 that was by not dividing the channels asymmetrically or
7 unequally. Sometimes you had a big data flow, and that couldn't
8 fit through one channel, so it had to be divided into multiple
9 channels. And sometimes the way the channels were divided, the
10 data flow was lower, and so you had underutilization. So there
11 was like unused capacity.

12 Now as a practical sense, this is very similar to
13 anything that happens in the flow of water, for example, whether
14 it's unintentional by a course of nature or it's in-house in
15 plumbing. We all know that there are water mains that run
16 through our cities, and hopefully they stay intact. We usually
17 only think about them when they break, and those water mains are
18 very large in diameter. By the time it gets to your
19 neighborhood, it steps down to a smaller. And when it gets to
20 your house, it steps down to even smaller because the idea being
21 is you don't need to have a giant tube to actually carry the
22 amount of water that goes to our house.

23 But what's curious about this, that this is apparently
24 the whole radical idea that was supposed to be encompassed, is
25 that we find out later that it really doesn't even matter because

1 when you get to Column 6, if you look at Column 6 at Line 51 --
2 and I'll give everybody a moment to get there -- it starts off,
3 "Secondly, it is to be understood that while the invention has
4 been disclosed and defined by reference to specific subchannels
5 in the allocation of data from sensors to respective ones of
6 these, it is understood that the sensor producing a high data
7 rate may for that purpose have allocated to it a number of
8 subchannels or, thus, a group of subchannels accordingly."

9 So what this is saying is sometimes the data is still
10 too big and, when it is, you do it the same way you always did
11 it. You just allocate it across a couple of other channels, and
12 suddenly the twin evils are no longer a problem. We're back to
13 doing it exactly the way it was done before; the abstract idea of
14 dividing data and transmitting it through channels.

15 Now one of the things that this -- I know the Court is
16 well aware of is that we need to look at whether or not there's
17 language in the claims that ties this to whatever the alleged
18 improvement's going to be, and we're going to look at that in
19 regard to Step Two. But it's important, while we're here at this
20 point, this idea that it's dividing up from one channel, that
21 it's big for the big data or a little channel for the little data
22 or sometimes you still have to just do it not by ones but still
23 divide it, if we look back at Claim 1 and we look at the
24 Subparagraph (c), one of the "characterized by" characteristics
25 is the divided data is allocating the data from said local data

1 sensors to respective ones or groups of said subchannels. Plain
2 language, exactly as we saw in Column 6, you put it into one
3 channel or, if you need, into the groups.

4 So what we're looking at here, regardless of how we
5 slice it, is we're looking at an abstract concept which is coming
6 back full circle. They admit it could have been done wired and
7 it worked, but it was inconvenient, and now we get to the point
8 where what we've done is we put it wireless. It wasn't perfect.
9 They tell you how they say they can make it better, but in the
10 end, it really doesn't matter.

11 Critically, when it comes to this abstract concept,
12 it's important to note that there's no new data type. There's no
13 new data information. It hasn't -- It's not like they created
14 like a new file format, like a jpeg or they're using a specific
15 protocol. There's no new data transmission method. There's no
16 new version of a Bluetooth or a 5G or an LTE. It doesn't change
17 the amount of data. It doesn't make the data bigger. It doesn't
18 make the data smaller, so it's not a compression factor. All
19 it's doing is manipulating the data in some way and transmitting
20 it. It doesn't provide a new method of dividing the data.
21 There's nothing in here that says anything is new in that regard.

22 And it doesn't allow the sensor to collect previously
23 unknown information or allow it to collect data more accurately.
24 There's no special processing. There's no special transmitting.
25 All in all, it's the same inconvenient wired method in its

1 less-than-perfect wireless form.

2 So on this basis, we believe that what we have here in
3 Claim 1 is directed to the abstract idea of dividing the channels
4 into subchannels and then transmitting the data from the sensors
5 through those subchannels.

6 Now in Step Two, as the Court is also, I know, well
7 aware, if we found that there's an abstract concept --
8 Admittedly, if you don't think it's an abstract concept, we don't
9 get to Step Two. But assuming for the moment that it's pretty
10 abstract, what we're going to have to do is: We look -- In Step
11 Two, we consider the claims, the elements of the claim
12 individually and in order of combination to determine whether the
13 additional elements transform the nature of the claim into a
14 patent eligible application. And it can't simply be: Apply the
15 abstract method to get a result.

16 Now as we've already noted, Claim 1 doesn't require any
17 specific equipment. There is no multiplexer. It does require
18 sensors, but the sensors are admittedly all known sensors
19 performing their known functions.

20 If we look, for example, at -- excuse me one moment --
21 Column 5, and we're looking at Line 55, "The data streams are
22 allocated to the 16 subchannels indicated diagrammatically at 64
23 in Figure 2. The allocation is effected in accordance with the
24 known data rate requirements of the individual sensors according
25 to their known uses." So the Specification clearly states the

1 sensors aren't doing anything other than what they were known to
2 do in the fashion that they were known to do it.

3 There's no teaching of a different type of
4 multiplexing. Despite the fact that it says that -- in the brief
5 that there's a multiplexer, which we know that there's not, but
6 as I mentioned before, there actually is no discussion whatsoever
7 in this Specification that says that there is a multiplexer. To
8 the contrary, if we look at again Column 5, starting at Line 22,
9 we see that the main function of controller 40 is to provide a
10 multiplexing function whereby communication channel 12 is divided
11 into 16 subchannels. I would respectfully submit that,
12 Your Honor, as you look through this Specification and, in
13 particular, Column 5 where it gets into more details as to what
14 is happening, what we repeatedly see is that everything is
15 completely described in the nature of its functionality.

16 On Line -- For example, starting on Line 29, "The
17 functions of controller are shown as divided into functions 58,
18 60 and 62." And then going down to Line 37, "which is fed to the
19 RF transmitter function," and this will repeat. I'm not going to
20 go through it every single time. But as you go through every
21 single aspect of the physicality of the physical components,
22 they're all described and they're functional. Transmitters
23 transmit, sensors sense, data processors process, controllers
24 control, et cetera.

25 And if we look at with regard to this processor that's

1 performing this apparently -- allegedly unique multiplexing
2 function, when we look at Column 4, we see that, "As shown in
3 Figure 1, a system 10 for wireless transmission of data through a
4 communication channel 12 between local data sensors 24, 16, 18,
5 20 and 22, and a data-processing function or personal computer
6 24, to receive data therefrom."

7 This is all described in its most generic and
8 conventional fashion; any personal computer and not even a
9 particular processor; a data processing function. That is not
10 sufficient. It is purely functional language. When you review
11 these paragraphs and you review the Spec. as a whole, all we see
12 is there are no new sensors. There is no new processor. There's
13 no new controller. There's no wireless transmitter. There's no
14 new wired transmitter. There's no new wireless receiver or
15 otherwise. Rather, conventional sensors sensing data.
16 Conventional processors processing; in this case, dividing the
17 data; a conventional transmitter transmitting the data.

18 The inventive concept, if there is one, must be
19 apparent in the claim language as this Court knows from its prior
20 decisions in, for example, *iLife* case.

21 THE COURT: Yeah. I'd rather you cite the *iLife* case
22 rather than the *Bascom* case, Mr. Labgold. One for two.

23 MR. LABGOLD: I understand.

24 THE COURT: One for two.

25 MR. LABGOLD: And for what it's worth, *Bascom* threw all

1 the practitioners for a loop as well because it wasn't exactly
2 clear how that slicing was made. But be that as it may, the
3 Court, like the Lord, sometimes works in mysterious ways,
4 apparently.

5 So -- But, again, as -- as the Court recognized, that
6 it must be clear in the claim language, and there's nothing.
7 There's no new inventive concept that is reflected in this claim
8 language that they could point to, that they can put a pin on,
9 that they can hang their language on. And for this reason, under
10 all of the standards that are put before us is that we see there
11 are no inventive concepts.

12 I will close, with the exception of any questions you
13 might have, with the issue of futility because in advance of the
14 motion coming in, we suspected that something like this might
15 actually be in the brewing, and that I just submit to the Court
16 that any attempt to do so would be futile on multiple levels
17 because there is, as we've walked through, there is no language
18 in the Specification that says "improve computer functionality."
19 And the Federal Circuit precedents say you can't just say that
20 conclusory. You need to point to something in the Spec. that you
21 could show actually that computer functionality improvement is
22 reflected. There's nothing here, and so there's no language that
23 can be added. There's no factual assertions that can be made and
24 we respectfully submit the addition of claims.

25 And while it's clearly a cribbing problem because of

1 the nature of the way this brief was created, there's a very
2 interesting artifact that I think -- I would like to point out to
3 the Court. On Page 6, just before the statement of the case, in
4 responding to an issue, which we did not assert, we didn't say
5 that their pleading was insufficient. Apparently that must have
6 been an issue in the prior *A.B.P.* case, but we didn't complain
7 about their pleadings, but there's a sentence in here that is
8 worth giving a full attribution for, and it's the last sentence
9 of the last full paragraph. "No further factual pleadings are
10 required." And we wholeheartedly agree with that. We do not
11 believe that there are any factual pleadings that are required,
12 nor do we believe that there are any factual pleadings that are
13 possible from this Specification that could save these claims
14 from being found ineligible.

15 And subject to any questions at this point, I have
16 nothing further, Your Honor.

17 THE COURT: All right. I have none.

18 Mr. Rabicoff? Can't hear you, sir.

19 MR. RABICOFF: Now we have two instances of talking on
20 "mute."

21 Okay. So first, I'm going to turn to *Alice* Steps One
22 and Two. And then, you know, because this was brought up in both
23 the Response and the Reply, I do want to circle back briefly to
24 the *A.B.P.* decision and make some comparisons, right, and why
25 this should at least be a good guiding post for the outcome of

1 this case.

2 So, first, let's look at Alice Step One. So Claim 1 is
3 not abstract under any reasonable construction of the terms. And
4 so I think this is one thing that hasn't been addressed yet,
5 right, is the specific problem addressed by Claim 1, and that's
6 facilitating the transmission of data from sensors that have
7 substantially different data transmission requirements.

8 So this isn't about improving the efficiency of a
9 computer; right? It's about developing a specific wireless
10 protocol that addresses this problem. So if we look at prior art
11 systems, right, in the prior art you had different transmission
12 rates for data sensors, right, that resulted in the bottlenecks
13 and slowdowns during wireless transmission of data from data
14 sensors to data processors. So specifically in prior art
15 systems, you had both sensors that -- that could require either
16 high or low data transmission rates, and these systems would set
17 aside the same amount of bandwidth for both types of sensors.
18 And so this means you're using the same amount of bandwidth.
19 You're either overutilizing or underutilizing that amount of
20 bandwidth; right?

21 So Claim 1 provides a discrete method for addressing
22 this problem. This is the wireless transmission protocol that's
23 been developed on Claim 1. And what it does is it divides a
24 wireless communication channel into asymmetrical subchannels so
25 that the allocation of data from the data sensors to the

1 subchannels is calibrated to the data-carrying capacities of the
2 subchannels; right? So, again, this is a -- this is a particular
3 technique. It's a particular wireless protocol that -- that is
4 carried. And this is a method; right? So this is -- We're not
5 claiming an apparatus; right? It's claiming a particular
6 protocol that addresses this particular problem in the art. And
7 if you look at the Specification Prosecution History, it makes
8 clear that this is a particular problem that's addressed by Claim
9 1 that can -- that can only arise from transferring data from
10 multiple data sensors within -- within a wireless transmission
11 system.

12 And so this holding, this -- this situation perfectly
13 aligns with the problem that was also solved in *DDR Holdings*, and
14 this is where the Federal Circuit opined that claims are patent
15 eligible when they are, and I quote, "necessarily rooted in
16 computer technology in order to overcome a problem specifically
17 arising in the realm of computer networks." So, again, this
18 isn't a problem of your processor's too slow. There's bandwidth
19 bottlenecks. It's a particular protocol that overcomes -- that
20 uses asynchronous data transmission rates to address a particular
21 issue with bandwidth utilization.

22 So you also look -- Moreover, in Claim 1 it assigns
23 specific functions, right, to particular concrete components to
24 -- to achieve this result. So, in particular, the claim
25 components are the wireless transmission method itself and what's

1 referred to as the "data processing means." So it's a wireless
2 transmission protocol that defines a particular data processing
3 means. And this protocol assigns a novel, discrete functionality
4 to the overall process. It divides communication channels
5 asymmetrically so the data-carrying capacities of the subchannels
6 are unequal. It's a limitation, and allows them to be properly
7 calibrated to the bandwidth needs of the sensors which are also
8 claimed and then the data processing needs; right -- this is a
9 specific limitation -- also has a discrete function which is
10 allocating data from local sensors to communication subchannels
11 with data rates being properly calibrated to those sensors. And
12 an implementation of this is found, for example, in Figures 2 and
13 4 in the Specification which was cited in the brief.

14 Now -- So when we look at OKI's, you know, in the
15 briefing and also just, obviously, in the oral argument, it's
16 finding claim on abstract only by gutting these key limitations
17 from Claim 1. So OKI sums up Claim 1. I know there's a dispute
18 over or how they summed it up, but the idea is that we're simply
19 dividing data, right, in a generic manner, in a predictable
20 generic manner using multiple sensors; right? And, you know, of
21 course, that that's -- maybe that they're going to say that's not
22 an accurate assessment, but the point is that it's merely using
23 generic transmission protocols in order to divide data into
24 multiple subchannels; right? That's simply not the case here.

25 But in doing so, OKI's read claims at such a high level

1 of abstraction that they become untethered to the claim language.
2 And we know that this has been announced -- This has been
3 prohibited by *Enfish*. But if we actually look at the field of
4 invention of Claim 1, it's much narrower than OKI's alleged
5 abstract idea. So the -- the actual field of invention is a
6 wireless transmission of data through communication subchannels
7 with local data sensors and data processing functions to receive
8 that data from the local sensors. So it's -- And this is all
9 purely tied to the claim language. That's the actual field of
10 invention. But from OKI's abstract idea standpoint, it involves
11 really any form of data transmission, right, that divides -- that
12 divides channels in any manner; right? And it could be a wired
13 or wireless system, even though on this case we're really
14 addressing a unique particular problem in wireless systems,
15 right, by applying this particular wireless protocol; right?

16 So because OKI has elided key limitations, right, the
17 unique functions of the wireless transmission protocol and data
18 processing means, only by doing so, it's able to suggest that
19 Claim 1 is abstract.

20 But, you know, even if -- even if this Court finds that
21 Claim 1 is abstract, which we don't suggest is the case, let's
22 turn to *Alice* Step Two, right, that Claim 1 embodies
23 unconventional and concrete components running discrete
24 operations; right?

25 So Claim 1 recites, and I'll paraphrase the key

1 limitations, that there's a communication channel that is divided
2 by our wireless protocol; that there's the data transmitted
3 through subchannels, and the data processing means allocates data
4 from data sensors through subchannels calibrated for
5 substantially different data requirements; right? So the
6 wireless transmission protocol and data processing means are
7 discrete components with clearly assigned functions.

8 And, again, this function is not merely speeding up a
9 computer. It's not applying something to a generic computer.
10 These are particular functions that -- that lead to this wireless
11 transmission protocol that addresses a particular problem in the
12 art.

13 So the Specification simply belies OKI's claim that the
14 data sensors are nothing more than a generic transmission of data
15 that transmits raw data, right, and divides it into subchannels.
16 So as discussed before, prior art systems have assigned the same
17 bandwidth to different sensors regardless of the data bandwidth
18 requirements. And the claim language in Claim 1 specifically
19 addresses that problem; right? So if we're taking on this
20 problem in the art, Claim 1 requires this unconventional wireless
21 transmission protocol that's adapted to divide communication
22 channels asymmetrically, in a particular manner asymmetrically,
23 and where the data-carrying capacities of the subchannels are
24 calibrated to the needs of the claim sensors. So this -- this
25 data processing means works in concert with the claimed wireless

1 transmission protocol, and it carries out a multiplexing
2 functionality; right? It is a multiplexing functionality to
3 allocate the data and calibrate it in a proper manner to best
4 utilize bandwidth; right?

5 So we look at, you know, what are the two invented
6 concepts; right? These two invented concepts are, again,
7 directly tied to and, in fact, explained by the claim language.
8 Number one is this process of dividing the communication channels
9 asymmetrically whereby the data-carrying capacities of the
10 subchannels are unequal and calibrated to the data sensory input.
11 And the second is the allocation of data from data sensors to
12 subchannels based on substantially different data rate
13 requirements, and that's fine in the -- found in the data
14 processing means location.

15 So these are -- This is literally just directly tied to
16 the claim language itself where these -- these two inventive
17 concepts arise from.

18 So if we look at -- under *Berkheimer*, I mean this is
19 really important, right, is that OKI keeps stating that, "Well,
20 no, this is not -- there's no sensors, there's no new processor,
21 there's no new method." And, of course, the standard here is not
22 whether we disagree with that, but the standard is not simply
23 whether "Oh, do you have a new processor or do you have -- do you
24 have something novel;" right? This conflates novelty with
25 unconventionality; right? And *Berkheimer* specifically --

1 specifically prohibited that approach. It said, "The question is
2 whether a particular technology is well understood, routine and
3 conventional." And that goes beyond simple novelty; right? This
4 is not simply a test for novelty.

5 So I do want to just kind of briefly, because, again,
6 both the Response brief and the Reply brief address the *A.B.P.*
7 case, so I want -- I just want to point out here how there's
8 similarities; right? We're talking about a patent where the --
9 it includes a ruling on the same claim, Claim 1; right? It's the
10 same issue of 101, the same issue of law. We would argue that
11 this really is substantially identical arguments, not to say that
12 the case law is identical but there hasn't really been, in our
13 view, different cases that were cited, right, that involved
14 actually a very close analogizing between those negative cases
15 and the Claim 1 here.

16 THE COURT: Well, I would say there are a number of
17 cases that are cited in the Defendant's brief that are more
18 recent than the *A.B.P.* case, none of which you commented on at
19 all, including, but not limited to, *Simio versus FlexSim*
20 *Software, Cellspin Soft versus Fitbit, et al.,* and *Digitech Image*
21 *Technologies versus Electronics for Imaging,* all of which are
22 discussed at some length in the Defense brief and none of which
23 are discussed in yours.

24 MR. RABICOFF: Okay, Your Honor. So let's look at --
25 let's look at a couple of those, the *Simio* being an example.

1 There's one interesting point here, right, which is specifically
2 brought up; right? The *Simio* case was specifically discussed by
3 opposing counsel in the context of this case coming out after the
4 *A.B.P.* case; right? What's interesting about that, the actual
5 passage that they cite, and there actually is an inner citation
6 which was omitted, which was omitted in the brief, and that inner
7 citation is a Federal Circuit case from 2015 or it's a Federal
8 Circuit case from 2015, and that was the -- One second. Let
9 me -- I can pull it up. I have it in front of me. Yeah, the
10 *Customedia* case in the Federal Circuit. It was a 2015. Now --
11 But let's look at -- let's look at the passage; right?

12 It's the idea that there is claimed improved speed and
13 efficiency inherent with applying the abstract idea on a computer
14 is insufficient to render the claims patent eligible as an
15 improvement of computer functionality; right? So as has been
16 repeatedly stated, right, this is not about an improvement to
17 computer functionality; right? It's not about an improvement to
18 speed or efficiency; right? This has -- specifically has to do
19 with bandwidth bottlenecks that occur as a result of allocating
20 the same amount of bandwidth to -- with respect to data sensors,
21 regardless of the actual bandwidth needs of the sensors
22 themselves; right? And it's using a particular process of
23 dividing those subchannels; right? So this is really
24 something -- Is it about a generic computer? Is it about simply
25 like increasing the processing speed of a computer? Absolutely

1 not; right? It's simply not the case; right? This is -- This is
2 entirely distinguishable from this case. And the point was, for
3 example, *Simio*, there's really not -- there was not, looking at
4 the claims of *Simio*, really making an analogy between those
5 specific claims in *Simio* and this case. And that's because, you
6 know, the area is a little bit different; right? And this is
7 sort of like -- For example, *Digital Imaging Tech* is another
8 example. It involves a math -- a specific -- well, a
9 mathematical algorithm that's sort of claimed in a very vague way
10 and the idea of using that mathematical algorithm to -- to
11 organize information and allegedly generate new information;
12 right? It's not tied to a specific structure.

13 It's just not the case here; right? Here, it's not
14 simply a vaguely referred-to algorithm. It's a specific
15 protocol. It has a specific way of dividing channels coming from
16 data sensors, subdividing them in a manner that allows
17 calibration to the data needs of the sensors; right? It's using
18 a data processing means and a particular wireless protocol to
19 carry this out.

20 So again we find this available. It's clearly
21 distinguishable from *Digital Imaging Tech* for that reason; right?
22 These are -- There is a specific structure and a concrete
23 assignment of functions to particular components in order -- in
24 order to achieve an unconventional outcome; right? Also, there
25 is -- there's a really close link between this addressing a very

1 specific problem in the art; right? It's addressing a specific
2 problem in the art with a discrete solution, and that's simply
3 not the case, you know, these other cases where -- where it
4 really didn't make that -- have that nice close tie between a
5 particular problem in an art and a technical solution that
6 addressed that problem.

7 So for those reasons, we see that these new cases are
8 simply -- are simply unavailing. And, you know, subject to -- to
9 Your Honor's further questions, for these reasons, we think that
10 the same outcome should be reached as in the *A.B.P.* case.

11 And I should mention, you know, just to be very clear
12 that -- that, in fact, we do believe, you know, looking at, for
13 example, data processing means, right, the idea that there's a
14 wireless transmission protocol, these particular unique
15 limitations, right, do require claim construction; right? To the
16 extent this wasn't, you know, clear in the brief, it is our view
17 that claim construction is required in light of this, and really
18 it's sort of underlined by the fact that -- that OKI has elided
19 -- elided these key -- on the one hand, elided these key
20 limitations while assessing, right, at the *Alice* Steps One and
21 Two and at the same time suggesting, at least in the brief, that
22 they don't disagree with any of our sort of implicit claim
23 construction position. I don't think it's possible to hold both
24 beliefs at the same time. So, in fact, at the very minimum, you
25 know, whatever our implicit constructions are of the claim terms,

1 there must be a disagreement if there's such a divergence as to
2 what these claim limitations actually suggest.

3 So for all those reasons, we suggest that OKI's motion
4 should be denied. And I open up to questions at this point.

5 THE COURT: No questions.

6 Mr. Labgold, don't just repeat what you said either
7 orally or in your briefing. If you have something specific that
8 you want to say in response to what Mr. Rabicoff said, this is
9 the time to do it.

10 MR. LABGOLD: Thank you, Your Honor. Just a couple of
11 things quickly.

12 With regard to *Simio* and the curious thing about citing
13 earlier cases, the passage referred to -- cited to was identified
14 as *Customedia*. *Customedia* is a 2020 case which, I believe, is
15 still after 2018.

16 And then with regard to *A.B.P.*, there still has been no
17 explanation as to what claim construction, in particular, would
18 change the outcome and why their claim construction, as they
19 apply it in their claim chart, is effective. The primary focus
20 that was discussed was about a specific particular technique and
21 a particular wireless protocol. Wireless protocol is never
22 discussed in the patent, nor is it discussed anywhere in the
23 claims. Setting aside the fact that the Specification
24 essentially tells you to try it and if it doesn't work, just do
25 it the old-fashioned way where you divide up the big data amongst

1 a bunch of little ones, the Spec. does not tell you how to
2 perform the allocation. There is no discussion as to how to do
3 the allocation. It simply says "allocate." That's what they say
4 the critical function is but they never tell you how.

5 As in *Affinity Labs*, there is nothing -- quoting from
6 *Affinity Labs* at 1258, "There is nothing in Claim 1 that is
7 directed to how to implement [the concept]. Rather, the claim is
8 drawn to the idea itself, and there is nothing more."

9 With regard to *Berkheimer*, we do not conflate Section
10 102 and 101. Those are different distinctions. And I would note
11 that in *Simio*, there's a citation that is worth noting at 1363,
12 quoting, "*Simio* stresses that the executable process limitation
13 is novel but even assuming that is true, it does not avoid the
14 problem of abstractness." And then quoting from *Synopsys*, the
15 *Simio* court said, "Indeed, a claim for a new abstract idea is
16 still an abstract idea."

17 With regard to the apparent impropriety in our relying
18 upon their claim construction for the purpose of this motion, we
19 would note that that's exactly what was discussed as appropriate
20 in the *Aatrix* case.

21 And other than that, unless there's any questions, I
22 have nothing further, Your Honor.

23 THE COURT: All right. What discovery, if any, is
24 required on the settlement agreement issue?

25 Mr. Rabicoff?

1 MR. RABICOFF: Yes. So with respect to discovery, you
2 know, I think -- I don't want to sort of limit ourselves; right?
3 I mean we have -- we have the set of e-mails; right? This has
4 been memorialized.

5 THE COURT: What else can there be? You claim a
6 contract --

7 MR. RABICOFF: Right.

8 THE COURT: -- is formed by the e-mail communications
9 that you made reference to in your pleading. What discovery
10 would possibly be germane? Isn't this a matter of law based on
11 the e-mail communications, either, yes, there is a binding
12 settlement agreement or, no, there's not?

13 MR. RABICOFF: Your Honor, I believe so. One issue
14 could be that in the -- in the Defendant's response, something
15 could -- they could make a response that could make other issues
16 relevant; right? We just don't know how to ---

17 THE COURT: All right. Mr. Labgold? I believe,
18 Mr. Labgold, as I understood your position, it would be, "We
19 agreed on the price, subject to agreement on other terms. We
20 didn't agree on other terms. If we accepted some of their other
21 terms, we would pay less" because those additional terms that
22 they wanted would require more of your client. I'm
23 extrapolating, but that's what I heard you essentially to say.
24 Is that true?

25 MR. LABGOLD: Yes. That pretty much accurately sums it

1 up.

2 THE COURT: Okay. So is this issue of the settlement
3 agreement and whether one was reached a summary judgment based
4 upon the e-mail communications? Do the e-mail communications
5 tell the complete story, Mr. Labgold? Or were there oral
6 communications not reflected in the e-mail communications?

7 MR. LABGOLD: There were oral communications, but for
8 the purpose of this, I mean, again, we're talking about a
9 situation where no contract is actually formed in our view. We
10 think it's a matter of law. We're looking at a situation where
11 there's -- We're looking at a pinpoint in time where the only
12 conceptual point that has been agreed is one term on one side,
13 and that is to the extent -- I mean I think that there's enough
14 there as it's pled that that can be decided as a matter of law.

15 THE COURT: Okay. Do I have the e-mail communications?
16 Because I don't think I do, but maybe I do and I have missed it.
17 Do I?

18 MR. RABICOFF: Your Honor, we wanted to be a little bit
19 careful because the settlement would have confidentiality terms.
20 So I want to be a little bit cautious about whether perhaps ---

21 THE COURT: Okay. All I want to know is if I have -- I
22 think the answer from your comment is I don't have the e-mails.

23 MR. RABICOFF: Does not. That's correct, Your Honor.

24 THE COURT: All right. Well, that seems, to me, to be
25 an issue that can be litigated quickly and easily on the papers

1 with whatever sealing order is required.

2 The Court is taking the 101 issue under advisement.

3 For the moment all matters in the case are stayed. The Court
4 encourages the parties to come up with a protocol to quickly and
5 economically bring to the Court's attention the issues related to
6 the settlement agreement so that that issue can be promptly and
7 economically resolved one way or the other.

8 The Court is taking under advisement *sua sponte* whether
9 any sanctions should be issued in this case based upon the
10 contents of the brief as previously referenced.

11 If there's nothing further, that concludes the hearing.
12 Thank you.

13 MR. TAYLOR: Your Honor?

14 THE COURT: Yes.

15 MR. TAYLOR: This is William Taylor, local counsel for
16 OKI. I just want to clarify your comment on the stay. Does that
17 include staying the deadline for answering or moving to dismiss
18 the Amended Complaint? Or do we need to file a response to that?

19 THE COURT: You should file such response as you
20 believe is required of you. If you don't think one is required,
21 then you don't need to file it. If you do think one is required,
22 then file it.

23 MR. TAYLOR: Thank you, Your Honor.

24 MR. LABGOLD: Thank you, Your Honor.

25 THE COURT: All right. Thank you.

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MR. RABICOFF: Thank you, Your Honor.

THE COURT: That concludes the hearing. Thank you.

(Hearing adjourned at 3:10 PM.)

CERTIFICATE OF OFFICIAL REPORTER

I, Deborah A. Kriegshauser, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of Texas, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 16th day of July, 2021.

/s/ Deborah A. Kriegshauser

DEBORAH A. KRIEGSHAUSER, FAPR, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER